

JOSEPH FARRELL (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against GANICK, O’BRIEN & SARIN (“Defendant”):

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3 3. Defendant conducts business in the Commonwealth of
4 Massachusetts; therefore, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2).

6
7 **PARTIES**

8 5. Plaintiff is a natural person residing in Boston, Massachusetts 02127.

9 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
10 1692a(3).
11

12 7. Defendant is a national debt collection company with its corporate
13 headquarters located at 161 Granite Avenue, Dorchester, Massachusetts 02124.

14 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
15 1692a(6), and sought to collect a consumer debt from Plaintiff.
16

17 9. Defendant acted through its agents, employees, officers, members,
18 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
19 representatives, and insurers.
20

21 **FACTUAL ALLEGATIONS**

22 10. At all relevant times, Defendant contacted Plaintiff in its attempts to
23 collect a consumer debt.
24
25

1 11. The alleged debt, a home utility account issued by NSTAR Electric
2 Company, arose out of transactions, which were primarily for personal, family, or
3 household purposes.
4

5 12. As Plaintiff has no business debt, the alleged debt arose out of
6 transactions that were for personal, family or household purposes.
7

8 13. Beginning in or around December 2013, and continuing through April
9 2014, Defendant communicated with Plaintiff in an attempt to collect an alleged,
10 consumer debt.
11

12 14. Initially, Defendant sent a collection letter addressed to Plaintiff at his
13 sister's address.
14

15 15. Plaintiff's sister, in opening her mail, opened Defendant's letter and
16 learned that Defendant was attempting to collect a debt from Plaintiff.
17

18 16. In its letter, Defendant that had obtained a default judgment against
19 Plaintiff and that he had five (5) days to contact its office or a "capias"¹ would be
20 issued.
21

22 17. Alarmed, Plaintiff's sister immediately contacted Plaintiff to advise
23 him of this letter.
24

25 ¹ *Capias* - Any of various types of writs that require an officer to take a named defendant into custody.
CAPIAS, Black's Law Dictionary (9th ed. 2009).

1 18. Plaintiff, fearing the issuance of a capias and worried about the
2 consequences of a default judgment, contacted Defendant.

3 19. Defendant demanded payment of \$1,559.00, which was an amount
4 greater than the amount of the debt owed to NSTAR Electric Company.
5

6 20. Plaintiff felt compelled to enter into a payment plan and made a
7 payment of \$200.00 on January 28, 2014, and a payment of \$100.00 on March 26,
8 2014.
9

10 21. Defendant, however, did not credit Plaintiff with the full amount of
11 his payments, as on or after April 17, 2014, it sent him correspondence demanding
12 payment of \$1,329.16, an amount greater than what was owed. See Exhibit A,
13 Defendant's April 17, 2014, letter to Plaintiff.
14

15 22. Further, Defendant never disclosed to Plaintiff whether any portion of
16 the amount it was seeking to collect included interest, late fees and/or collection
17 fees.
18

19 23. Additionally, in its communications with Plaintiff, Defendant advised
20 Plaintiff that it had not received a payment of \$100.00 from him on April 9, 2014,
21 and included a payment sub with the following, "NSTAR Electric Company VS.
22 Joseph Farrell, Case #: 066593," in order to lead or trick Plaintiff into believing
23 that legal action had been commenced against him. See Exhibit A.
24
25

1 24. Upon information and belief, Defendant did not intend and/or had not
2 taken legal action against Plaintiff, as Plaintiff was never served any lawsuit.

3 25. Rather, Defendant was using this to scare and intimidate Plaintiff into
4 paying money.

5 26. Finally, within five (5) days of its initial communication with
6 Plaintiff, Defendant failed to send Plaintiff written correspondence advising him of
7 his rights to dispute the debt and/or to seek validation of the debt, as well as to
8 request the name and address of the original creditor.
9

10
11 **DEFENDANT VIOLATED**
12 **THE FAIR DEBT COLLECTION PRACTICES ACT**

13 **COUNT I**

14 27. Defendant's conduct, detailed in the preceding paragraphs, violated 15
15 U.S.C. § 1692c(b).

16 a. A debt collector violates § 1692c(b) of the FDCPA by
17 communicating, in connection with the collection of a debt,
18 with any person other than the consumer, his attorney, a
19 consumer reporting agency if otherwise permitted by law, the
20 creditor, the attorney of the creditor, or the attorney of the debt
21 collector, without the prior consumer of the consumer given
22 directly to the debt collector.
23

24 b. Defendant violated § 1692c(b) of the FDCPA when it
25

1 communicated, in connection with the collection of a debt, with
2 a third party, Plaintiff's sister, without having Plaintiff's
3 express permission to do so, by sending a collection letter to her
4 residence disclosing that Plaintiff owed a debt.
5

6 **COUNT II**

7 28. Defendant's conduct, as detailed in the preceding paragraphs, violated
8 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5) and 1692e(10).
9

10 a. A debt collector violates § 1692e of the FDPCA by using false,
11 deceptive, or misleading representations or means in connection
12 with the collection of any debt.
13

14 b. A debt collector violates § 1692e(2)(A) of the FDCPA by
15 falsely representing the character, amount or legal status of any
16 debt.
17

18 c. A debt collector violates § 1692e(5) of the FDCPA by
19 threatening to take any action that cannot legally be taken or
20 that is not intended to be taken.
21

22 d. Section 1692e(10) of the FDCPA prohibits debt collectors from
23 using any false representations or deceptive means to collect or
24 attempt to collect any debt or to obtain information concerning
25 a consumer.

- 1 e. Here, Defendant violated §§ 1692e, 1692e(2)(A), 1692e(5) and
2 1692e(10) of the FDCPA by falsely representing the amount of
3 the debt, as well as threatening to take Plaintiff to Court and
4 sending him correspondence which gave the appearance that a
5 legal action had been commenced against him and threatening
6 to have a capias issued, when it did not and/or had not taken the
7 threatened legal action and did not intent to take such action.
8
9

10 **COUNT III**

11 29. Defendant's conduct, as detailed in the preceding paragraphs, violated
12 15 U.S.C. §§ 1692f and 1692f(1).
13

- 14 a. Section 1692f of the FDCPA prohibits debt collectors from
15 using unfair or unconscionable means to collect or attempt to
16 collect an alleged debt.
17
18 b. A debt collector violates § 1692f(1) of the FDCPA by
19 collecting an amount (including any interest, fee, charge, or
20 expense incidental to the principal obligation) unless such
21 amount is expressly authorized by the agreement creating the
22 debt or permitted by law
23
24 c. Defendant violated §§ 1692f and 1692f(1) of the FDCPA when
25 it collected an amount greater than what the agreement creating

1 the alleged debt provided, by failing to give Plaintiff credit for
2 the payments he made on the debt, and when it engaged in other
3 unfair conduct.
4

5 **COUNT IV**

6 30. Defendant's conduct, as detailed in the preceding paragraphs, violated
7 15 U.S.C. § 1692g.
8

9 a. A debt collector violates § 1692g(a) of the FDCPA by failing to
10 send to the consumer, within five days after its initial
11 communication with a consumer in connection with the
12 collection of a debt, a written notice containing: (1) the amount
13 of the debt; (2) the name of the creditor to whom the debt is
14 owed; (3) a statement that unless the consumer, within thirty
15 days after receipt of the notice, disputes the validity of the debt,
16 or any portion thereof, the debt will be assumed to be valid by
17 the debt collector; (4) a statement that if the consumer notifies
18 the debt collector in writing within the thirty-day period that the
19 debt, or any portion thereof, is disputed, the debt collector will
20 obtain verification of the debt or a copy of a judgment against
21 the consumer and a copy of such verification or judgment will
22 be mailed to the consumer by the debt collector; and (5) a
23
24
25

1 statement that, upon the consumer's written request within the
2 thirty-day period, the debt collector will provide the consumer
3 with the name and address of the original creditor, if different
4 from the current creditor.
5

- 6 b. Here, Defendant violated § 1692g of the FDCPA by failing to
7 send written notification, within five (5) days after its initial
8 communication with Plaintiff, advising Plaintiff of his rights to
9 dispute the debt or request verification of the debt or providing
10 him with the name of the original creditor and the amount of
11 the debt.
12

13
14 WHEREFORE, Plaintiff, JOSEPH FARRELL, respectfully prays for a
15 judgment as follows:

- 16 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
17
18 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
19 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
20
21 c. All reasonable attorneys' fees, witness fees, court costs and other
22 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §
23 1693k(a)(3); and
24
25 d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, JOSEPH FARRELL, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: October 3, 2014 KIMMEL & SILVERMAN, P.C.

By: /s/ Craig Thor Kimmel
CRAIG THOR KIMMEL
BBO# 662924
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com